

## LABOUR DEPARTMENT

The 7th March, 1995

No. 14/13/87-6 Lab./303.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial-cum-Labour Court, II, Faridabad, in respect of the dispute between the workman and the management of M/s. Soi Engineering Corp., *versus* Shivji Singh :—

IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,

FARIDABAD

Ref. No. 274/91

*Between*THE MANAGEMENT OF M/S. SOI ENGINEERING CORP. PLOT NO. 21, SECTOR 4, BALLABGARH,  
DISTRICT FARIDABAD*Versus*THE WORKMAN NAMELY SHRI SHIVJI SINGH, C/O A.I.T.U.C., OFFICE, MARKET NO. 1, N.I.T.,  
FARIDABAD*Present:—*

Shri Darshan Singh, for the workman.

Shri Jagbir Bhadana, for the management.

## AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication, —*vide* Haryana Government, Endst. No. 25069—73, dated 11th July, 1993 :—

"Whether the services of workman were terminated or he had abandoned the job himself by taking full and final dues ? The relief, to which is he entitled as result thereof ?

2. The case of the workman is that he had been in the service of the management with effect from 18th March, 1988. His services were illegally terminated with effect from 15th March, 1991 without any notice or reason. His last drawn wages were Rs. 1000/- p.m. He is thus, entitled to be reinstated into service with full back wages and continuity in service.

3. The management submitted written statement, dated 1st January, 1992 stating therein that the workman was appointed as Press Operator in 1988. He had resigned from the job on his own accord. He had collected his full and final dues on 5th November, 1988. It was further mentioned that again the workman was appointed for one month during the month of February, 1991.

4. The workman submitted rejoinder, dated 27th July, 1992 re-appearing the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issues were framed :—

1. Whether the services of workman were terminated or he had abandoned the job himself by taking full and final dues ? The relief, to which is he entitled as result thereof ? (as per reference).

6. Both the parties have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under :—

## Issue No. 1:

8. MW-1 Vasdev, partner of the firm deposed that the workman was appointed by them in the year, 1985 and he tendered his resignation, dated 5th November, 1988, Ex. M-1. He had got the amount of Rs. 591.07 through voucher Ex. M-2 as full and final dues. He further stated that the workman had then

submitted fresh application dated 29th January, 1991, Ex. M-4 for appointment and on that basis he had been issued appointment letter Ex. M-5 clearly indicating therein that the vacancy had occurred due to unusual pressure of work and it was likely to last upto one month. He also placed on record a copy of the failure report Ex. M-6 sent by the Labour cum-Conciliation Officer to the Deputy Labour Commissioner, Faridabad.

9. On the other hand, the workman deposed that he was appointed on 18th March, 1989 as Dye Sater by the management. He had proceeded on leave for one month from 12th February, 1991 to 11th March, 1991. He reported for duty on 12th March, 1991, but the management did not allow him to resume duty. He had neither tendered resignation nor had ever received full and final dues. He was also not issued any appointment letter.

10. It has been submitted on behalf of the management that it stands established from the statement of MW-8 Vasdev that the workman was appointed in the year 1985 and he had tendered resignation, dated the 5th November, 1988, Ex. M 1. He had also got the amount of Rs. 591.07 through voucher Ex. M 2 as full and final dues. The workman had thus, left the job himself by accepting his full and final dues and the management had not terminated his services. The workman was appointed a fresh on his application, dated 29th January, 1991, Ex. M-4 through appointment letter Ex. M-5 against the vacancy which had occurred due to unusual pressure of work likely to last for a period of one month. That being so, the workman is not entitled to the relief prayed for by him.

11. In reply, it has been contended on behalf of the workman that as stated by him on oath he had been in the employment of the management continuously with effect from 18th March, 1988 to 12th March, 1991. He denied his signatures on the resignation letter Ex. M 1 and voucher Ex. M 2. The management has not examined any hand writing and finger prints expert to prove that these documents bears the signatures of the workman. That being so, these documents cannot be considered in evidence. Resultantly, it stands proved that the workman had been in the employment of the management for a period of more than 240 days continuously and the termination of his services without making payment of retrenchment compensation envisaged under Section 25-F of the Act is illegal. Consequently, the workman is entitled to be reinstated into service with continuity in service and full back wages.

12. The workman had clearly stated in his demand notice as well as in the replication that he was appointed by the management on 18th March, 1988. He also confirmed this position on oath. The management in its reply simply stated that the workman was initially appointed as Press Operator in 1988. The management did not indicate exact date of his appointment. MW-4 Vasdev rather stated that the workman was appointed by them in the year, 1985. In these circumstances, it has to be taken that the workman was appointed on 18th March, 1988.

11. The next question which arises for determination is as to whether the workman had tendered resignation dated, 5th November, 1988 Ex. M 1 and had also received full and final payment of Rs. 591.07 through voucher Ex. M 2. This position has been confirmed by MW 1 Vasdev in his statement made in the court. The perusal of resignation letter Ex. M 1 and voucher Ex. M 2 also above that the resignation was accepted by MW 1 Vasdev and the payment was also approved by him. On the other hand, the workman has denied that he tendered resignation or had received the amount. He also disowned the signatures on these two documents. The signatures available on these two documents when compared with the admitted signatures of the workman made in the court clearly show that both the signatures tally. Apart from this, the management has placed on record a copy of the certificate Ex. M-3 show that the workman had been working with M/s. Kumar Aerosole (P) Ltd., with effect from mid November, 1988 January, 1989. It is also mentioned in this letter that the exact dates tenure during which the workman had worked with them were not available with the firm due to the fact that all records pertaining to the workman had been resumed by the Central Excise Department. In these circumstances, it stands established that the workman has tendered the resignation voluntarily Ex. M-land received the amount of full and final dues to join the other firm:

14. The workman has not placed on record any documentary evidence to prove that he had been working under the management during the year, 1991, as against this position the management has placed on record the appointment letter Ex. M 5 through which the workman was appointed for a period of about one month against the vacancy which had occurred due to unusual pressure of work. This appointment letter bears the signatures of the workman which tally with his admitted signatures. In this context, it is noted that the workman had not taken the plea in his pleadings that he had proceeded on leave as stated by him on oath. His version about leave period is also not supported by any other evidence. His statement can not be believed keeping in view the clear terms of appointment letter Ex. M-5. No. 1 is decided in favour of the management and against the workman.

As stated above, it is held that the workman had abandoned the job himself by not reporting for duty, the workman is not entitled to any relief. The award is passed accordingly.

U. B. KHANDUJA,

Presiding Officer,  
Labour Court-II, Faridabad.

Endst. No. 198, dated 3rd February, 1995.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to the Government, Haryana, Labour Department, Chardigarh.

U. B. KHANDUJA,

Presiding Officer,  
Labour Court II, Faridabad.

No. 14/13/87-6 Lab./309.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following ward of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of The Executive Officer-cum-Secretary, Market Committee, Ballabgarh, District Faridabad *Versus* Nand Kishore

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,  
FARIDABAD

Reference No. 359/92

*between*

THE MANAGEMENT OF THE EXECUTIVE OFFICER-CUM-SECRETARY, MARKET  
COMMITTEE, BALLABGARH, DISTRICT FARIDABAD

*and*

THE WORKMAN NAMELY, SHRI NAND KISHORE, S/O SHRI RAM SARAN C/O SHRI  
ASHOK KUMAR SHARMA, 2214, SECTOR-3, FARIDABAD

*Present :*

Shri Ashok Sharma, for the workman.

Shri Pardeep Sharma, for the management.

#### AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (here-in-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government Endorsement No. 30573-78—dated 3rd July, 1992:—

Whether the termination of services of Shri Nand Kishore is legal and justified? If not, to what relief is he entitled to?

2. The case of the workman is that he was appointed by the management as Mali on temporary basis for indefinite period on 16th January, 1991. His services were terminated on 11th December, 1991 on the ground that he had committed some misconduct. He was never issued any charge-sheet or show cause notices before the termination of his services. No domestic enquiry was got conducted by the management with regard to the alleged misconduct. The termination of his services by the management is thus, illegal, and unjustified. Consequently, he is entitled to be re-instated into service with continuity in service and full back wages.

3. The management submitted written statement dated 24th February, 1993 stating therein that the post of Mali had become surplus. Apart from this, the work and conduct of the workman was not satisfactory. Consequently, the workman was retrenched from service in accordance with law. The impugned order cannot be termed as an order passed by way of punishment awarded to the workman. Thus, the workman is not entitled to any relief.

4. The workman submitted rejoinder dated 3rd August, 1993 re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issues were framed:—

(1) Whether the reference is bad in law?

- (2) Whether the termination of services of Shri Nand Kishore is legal and justified ? if not, to what relief, is he entitled to ?
- (3) Whether the workman is gainfully employed ? If so, to what effect ?
- (4) Relief.

6. Both the parties have led evidence.

7. I have heard the authorised representatives of both the parties and have also gone through the evidence on record. My findings on the aforesaid issues are as under :—

**Issues No. 1 & 2:**

8. Both of these issues are interlinked and as such are discussed together.

9. The management has examined one witness MW-1 Surender Kumar and he deposed that the workman was appointed as Gardener through appointment letter Ex-M-1. His work had not been satisfactory and was issued warning through letter Ex-M-2. The Secretary of the Market Committee had written a letter Ex-M-3 to the higher authority for withdrawal of the post and then the workman was retrenched from service through letter Ex-M-4 and retrenchment compensation was sent to him along with that letter. Intimation with regard to the retrenchment of the workman was sent to the Government through letter Ex-M-5.

10. On the other hand, the workman examined himself on oath and deposed the facts mentioned above. Apart from that he stated that he was issued charge-sheet Ex-W-2 and he had sent reply Ex-W-1.

11. The perusal of the office report Ex-M-4 shows that the Executive Officer-cum-Secretary Market Committee, Ballabhgarh made the following report with regard to the present workman.

**"1. Shri Nand Kishore—Mali.**

There are three posts of Mali. Two persons already are working as Mali since long time. Shri Nand Kishore was appointed in the month of January, 1991 and was posted in sub-yard Mohna village. He was entrusted with the job to look after the gardening and to plant trees and flower plants and maintain the same. But he never discharged his duties satisfactorily. He was, thereafter, transferred to Principal yard so as to watch and observe his activities. But, even then he never discharged his duties as per instructions of this office and he was never serious to his duties. Moreover he did not know the work of Mali and names and quality of plants as well. However, he has been waited a number of times but he never came.

12. Apart from the above report MW-1 Surender Kumar admitted in his cross examination that the show cause letter Ex-M-2 was issued to the workman containing allegations and that the workman had submitted reply Ex-W-1 to that show cause notice. He also admitted that no domestic enquiry was got conducted to prove the allegations. He further admitted that the management had taken the decision to terminate the services of the workman after considering his reply.

13. Keeping in view the above petition, it can not be taken that the services of the workman were terminated simpliciter due lack of work or funds. It is admitted that the Government had sanctioned the funds for the post upto 31st March, 1992. The termination of services of the workman on 11th December, 1991 could not be due to lack of funds. There is no evidence that the work for which the workman was appointed had ceased to exist. It is thus, clear that the services of the workman were terminated by way of punishment. No domestic enquiry was got conducted. Had that been done the workman would have got opportunity to set up his defence. The services of the workman were terminated in violation of the principles of natural justice. The termination of services of the workman is thus, illegal and unjustified and the workman is entitled to be reinstated into service with continuity in service and back full wages.

Issues No. 1 and 2 are decided against the management and in favour of the workman.

**Issue No. 3 :**

14. The management has not led any evidence to prove that the workman is gainfully employed. The workman has stated on oath that he is unemployed and was dependent on his brothers.

Issue No. 3 is thus decided against the management and in favour of the workman.

## Issue No. 4 :

In view of the above findings on the issues it is held that the termination of services of the workman by the management is illegal and unjustified. Consequently, the workman is entitled to be reinstated into service with continuity in service and full back wages. The award is passed accordingly.

The 8th February, 1995.

U. B. KHANDUJA,

Presiding Officer,  
Labour Court-II,  
Faridabad.

Endorsement No. 200, dated the 8th February, 1995.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to Government of Haryana Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,  
Labour Court-II,  
Faridabad.

The 13th March, 1995

No. 14/13/87-6Lab./316.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-Cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s N. C. Jindal Eye and General Hospital, Model Town Hisar *versus* Kanshi Ram Joshi :—

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, HISAR

Reference No. 794 of 1990

Date of Receipt : 9-7-1990.

Date of Decision : 8-2-1995.

SHRI KANSHI RAM JOSHI, C/O S. SUKHDEV SINGH AHLAWAL,  
VOLLEYBALL COACH, DEFENCE COLONEY, H. NO. 228, HISAR .. *Applicant*

*versus*

M/S N. C. JINDAL, EYE AND GENERAL HOSPITAL, MODEL TOWN, HISAR .. *Respondent-  
Management.*

*Present :*

Shri R. S. Chaturvedi for the workman.

Shri R. S. Saini and Khushi Ram for management.

#### AWARD

In exercise of the powers conferred by clause (c) of sub section (1) of section 10 of the Industrial Disputes Act, 1947 (for short 'the Act'), the Governor of Haryana referred the following dispute between Kanshi Ram and the above mentioned management for adjudication to this court,—*vide* Labour Department Letter No. Hsr/120-90/27054-59, dated 27th June, 1990 :—

Whether services of Kanshi Ram were terminated or he left the job by absenting himself ? In either event, to what relief is he entitled ?

2. According to the workman, he was appointed as Ward Incharge by the management on 23rd April, 1987. However, on 14th December, 1989, his services were terminated by the management without issuing him any notice and without paying him compensation and as such the action of the management in terminating his services was illegal, without justification and violative of provisions of the Act. He, therefore prayed for reinstatement with full back wages.

3. The management, in its written statement, stated that Kanshi Ram was appointed as Compounder on 1st June, 1987. However, on 14th December, 1989 Kanshi Ram was asked to reconcile the stock of goods, which were entrusted to him and which were being handled by him, but shortage of Rs. 3296.95 was found. According to the management, the workman was asked to explain this shortage, but the latter without any information, slipped away from the Hospital and thereafter did not report for duty, nor submitted any leave application. It was further stated in additional plea that on 24th April, 1990 it was agreed that the applicant would report for work in the hospital and shall account for the shortage of goods on 2nd May, 1990 in the presence of Dr. A. K. Singh and Dr. Subhash Mittal, but the workman did not report for duty. In the preliminary objections, it was stated that the N. C. Jindal Eye and General Hospital is run by N. C. Jindal Charitable Trust and is not being run with profit motive. As such, the hospital was not covered by the definition of "industry", as given in the Act and as such, this Court has no jurisdiction to entertain the present case. It was also stated that the dispute had not been raised against proper management/employer.

4. On the above pleadings of the parties, the following issues were framed on 18th April, 1991 by my learned predecessor :—

- (1) As per terms of reference.
- (2) Whether the respondent is not industry?
- (3) Whether this Court has no jurisdiction?
- (4) Whether the matter has not been raised against proper employer?
- (5) Relief.

5. The parties led evidence in support of their rival claims. I have heard Shri R. S. Chaturvedi, Authorised Representative of the workman and S/Shri R. S. Sahni and Khushi Ram, Authorised Representative of the management and have gone through the case file carefully. My findings on the above issues are as under :—

#### Issue No. 1 :

6. Kanshi Ram WW-1 has stated that he was appointed as Ward Incharge on 23rd April, 1987 orally and that his services were terminated on 14th December, 1989 without giving him any notice or compensation. He however, denied in his cross-examination that on 14th December, 1989, shortage to the extent of Rs. 3296.95 were detected against him.

7. On behalf of the management Shri O. P. Balecha was examined as MW-1. He testified the copy of trust deed dated 17th January, 1965 as Ex. M-1. He also adduced in evidence copies of Balance sheets as Ex. M-2 to Ex. M-4 for the years 1989 to 1991. He further stated that on 14th December, 1989 on the order of Dr. D. T. Sharma, Medical Superintendent the stock of the workman was checked and shortage of Rs. 3296.95 was detected. He testified the copies of documents showing shortage as Ex. M-5 to Ex. M-8 and stated that the workman slipped away from the hospital thereafter. He further stated that before the Conciliation Officer, he had offered to the workman to attend to his duties and to explain the shortage in the presence of Dr. A. K. Singh and Subhash Mittal, but the workman thereafter never attended to his duties. He also stated that one registered letter dated 28th May, 1990 was sent to the workman to resume his duties and he testified the copy thereof as Ex. M-9.

The management also examined Mani Ram as MW-2. He also spoke about the shortage found on physical verification on 14th December, 1989 and stated that the workman, when asked to sign the said shortage statement, slipped away and never returned back. The management also examined one Surjit Singh as MW-3. He is resident of Tohana and he has claimed that the workman was practising as Doctor at Bus Stand Tohana for the last 4-5 years and that he got treatment from him. He also testified the slip Ex. MW-3/1 issued by the workman is this regard.

8. It is to be noted that in the written statement, the management had taken additional plea No. 2 that on 24th April, 1990 before the Conciliation Officer (wrongly mentioned as 'this Court') it was agreed between the parties that the workman would report for work in the hospital and that he would account for the shortage of good on 2nd May, 1990 in the presence of Dr. A. K. Singh and Dr. Subhash Mittal and the decision of these two doctors would be binding upon the applicant. It was further pleaded that Kanshi Ram did not report for duty inspite of opportunity given to him. On a perusal of file, I find that replication was filed by the workman on 18th April, 1991, but this additional plea raised by the management in the written statement, was not denied. In other words, this additional plea of the management would be deemed to have been accepted by the workman. It is also worthwhile to mention here that O. P. Balecha, MW-1 had specifically deposed about the said settlement before Conciliation Officer, in his examination in-chief, but interestingly, this part of the statement made by Shri O. P. Balecha was not challenged in his cross-examination. Further Surjit Singh, MW-3 has deposed that the workman was practising as a

doctor at Tohana for the last 4-5 years and that he took treatment from him once and he also adduced in evidence the prescription slip as Ex. MW-3/1, allegedly issued by the workman. Though the workman had denied deprecating as doctor at Tohana, but in the absence of any allegation of animus against Surjit Singh, there is no reason, as to why his statement should not be accepted on its face value. O.P. Balecha MW-1 and Mani Ram, MW-2 have unanimously deposed that on physical verification on 14th December, 1989, shortage in stocks was detected, but the workman refused to sign the statement prepared in this regard and slipped away from the hospital and never returned to his job.

9. Taking in totality the above circumstances into consideration, as narrated above, and in particular the undisputed offer made by the management to the workman before the Conciliation Officer to resume his job, which the workman did not avail of, the irresistible conclusion which can be drawn is that it was the workman, who had abandoned the job by remaining absent from duties and that the management had not terminated the services of the workman. In these circumstances, it was not necessary for the management to comply with the provisions of Section 25-F of the Act.

10. Facts were almost similar in the authority of Hon'ble Punjab and Haryana High Court reported as *Panipat Co-operative Sugar Mills Ltd. versus Labour Court & Others 1994 (II) LLJ-404*. In that authority also, an offer was made by the management to the workman before the Conciliation Officer for employment, but the workman did not avail of the said offer. This authority is applicable on all fours to our case and the workman is not entitled to any relief.

11. In the light of discussion above, I hold that the workman had abandoned the job by remaining absent from duties and that his services were not terminated by the management and the workman is not entitled to any relief. This issue is, therefore, answered against the workman.

#### Issue No. 2 & 3:

12. S/Shri R. S. Saini and Khushi Ram Authorised Representatives of the management contended that N. C. Jindal Hospital was being run by L. Netran Chandrawali Devi Jindal Charitable Trust and the main object of the trust was to render service to the poor without any profit motive. It was, therefore, argued that this institution was not an 'industry' as laid down in the Act and in support of this argument reliance was placed on the observations made by Hon'ble Supreme Court in the authority reported as *The Management of Safdar Jung Hospital, New Delhi versus Kuldeep Singh Sethi AIR 1970-SC-1407*. The contention of the Authorised Representatives of the management can not be accepted, because the above authority of *Management of Safdar Jung Hospital, New Delhi versus Kuldeep Singh Sethi* was over-ruled in the later authority of Hon'ble Supreme Court reported as *Banglore Water Supply / Sewerage Board versus A. Rajappa & Others 1978-SCC (L&S)-215*. The following observations made by Hon'ble Supreme Court in the above authority are of importance :—

"As regards charitable institutions, they fall into three categories—(a) those that yield profit, but the profits are siphoned off for altruistic purposes; (b) those that make no profit but hire the services of employees as in any other business; but the goods and services which are the output, are made available at a low or no cost to the indigent poor; and (c) those that are oriented on a human mission fulfilled by men, who work, not because they are paid wages, but because they share the passion for the cause and derive job satisfaction. The first two are industries, but not the third, on the assumption that they all involve co-operation between employers and employees".

13. In the instant case, it is evident from the balance sheets of the management Ex. M-2 to Ex. M-4 that the employees were being paid salary for the services rendered by him. As such, the management is an "industry" as defined in the Act and this Court has jurisdiction to entertain this reference. These two issues are, therefore, decided against the management.

#### Issue No. 4:

14. This issue was not pressed by the Authorised Representative of the management and was conceded to by them during arguments. This issue is, thus answered against the management.

#### Issue No. 5—Relief:

15. In view of my findings on the above issues, the petitioner had abandoned the job by absenting himself and his services were not terminated by the management and thus, he is not entitled to any relief. The reference is answered accordingly with no order as to costs.

The 8th February, 1995.

B. R. VOHRA,  
Presiding Officer,  
Industrial Tribunal-cum-  
Labour Court, Hisar.

Endorsement No.

dated:

A copy with two spare copies, is forwarded to the Financial Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,  
Industrial Tribunal-cum-  
Labour Court, Hisar.

No. 14/13/87-6Lab./344.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s Executive Engineer, Public Health, Division, Ambala Cantt. *versus* Krishan Gopal.

IN THE COURT OF SHRI S. R. BANSAL, ADDITIONAL DISTRICT AND SESSIONS JUDGE,  
PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 47 of 1993

WORKMAN SHRI KRISHAN GOPAL, SON OF SHRI PREM CHAND  
GOVERDHAN NAGAR, MODEL TOWN, CROSSING, NEAR NATH  
KOTHI, AMBALA CITY

*versus*

THE MANAGEMENT (1) EXECUTIVE ENGINEER, PUBLIC HEALTH  
DIVISION, AMBALA CANTT. AND (2) SUB-DIVISIONAL ENGINEER,  
PUBLIC HEALTH, SUB-DIVISION NO. 3, AMBALA CITY

*Present :—*

WR. Shri C. L. Sharma.

MR. Shri Raghbir Singh. ADA.

**AWARD**

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (for short called as 'the Act'), the Governor of Haryana referred the following dispute between the workman Shri Krishan Gopal and the management (1) Executive Engineer, Public Health Division, Ambala Cantt. (2) Sub-Divisional Engineer Public Health Sub-Division No. (3) Ambala City to this court for adjudication,—*vide* Haryana Government notification bearing No. 8503—09, dated 3rd March, 1993 :—

Whether the termination of services of Shri Krishan Gopal is valid and justified ? If not, so to what relief, is he entitled to ?

The workman served a demand-notice dated the 2nd December, 1992 under section 2-A of the Act. The conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having failed, the appropriate Government made the above mentioned reference to this Court for adjudication.

On receipt of the reference, notices were issued to the workman as well as to the management. The workman appeared and stated that his demand notice may be treated as his claim statement. The stand of the workman in the demand notice is that he was appointed as sewerage helper in the month of May, 1986 and his services were terminated on dated 21st October, 1992 in violation of mandatory provisions of section 25-F of the Act although he had rendered more than 240 days of service in a period preceeding twelve months of his termination. He, therefore, demanded his reinstatement with continuity of service and back wages.

On the other hand the stand of the management is that the services of the workman were terminated on the basis of complaint of Shri Harbans Singh and Madan Lal and there was no necessity to hold any enquiry. It was also pleaded that there was no necessity to provide any opportunity



to the workman as the termination of the services took place in pursuance of police report. In any case Public Health Department is not a industry. A prayer for the rejection of the claim statement was made.

The workman submitted replication controverting the allegations of the written statement of the management and reiterating those made in the demand notice claim statement. On the rival contentions of the parties the following points in issues were laid down for decision,—*vide* order dated 9th November, 1993:—

- (1) Whether the termination of services of Sh. Krishan Gapal, workman is illegal and against the mandatory provisions of Industrial Disputes Act, 1947 : If so, to what relief, is he entitled to ?

- (2) Relief.

Parties led evidence. I have heard the representatives of the parties. My findings are as under :—

Issue No. 1 :

In support of his case the workman appeared as WW-I and stated that he served with the management as daily rated worker from May, 1986 to 21st October, 1992 continuously. He also stated that before terminating his services no prior notice was given nor any retrenchment compensation was paid. Similarly no charge-sheet was served. He then stated that a false criminal case was registered against him in which he was acquitted by Shri R. C. Gupta Additional District and Sessions Judge,—*vide* judgement Ex. W-1. He stated about his unemployment and stated that his juniors are still working with the management. During cross-examination he denied a suggestion that he tore the clothes of police officer and stated that the case registered was false. In rebuttal the management has produced MW-1, Shri V. K. Sharma, S. D. O. who did not state anything about the service rendered by the workman for the period from May, 1986 21st October, 1992. He however, stated that the workman was arrested in some criminal case and that a letter photo copy of which Mark-A was received from the S. P., Ambala regarding the same. He lastly stated that the services of the workman were termination as per report contained in Mark-A. During cross-examination he admitted that the workman rendered the service from May, 1986 to 21st October, 1992. He also admitted that no prior notice, charge-sheet or retrenchment compensation was paid to the workman. He also admitted that one Suresh is still working.

From the above mentioned fact it is quite evident that the workman has rendered more than 240 days of service continuously. It is also admitted position of the record that no retrenchment was served nor any prior notice was given to the workman. Similarly no retrenchment compensation was paid. The stand of the management as stated by MW-1 Shri V. K. Sharma that the services of the workman were terminated on account of report letter Mark-A. First of all letter Mark-A has been duly proved on the file. The witness did not bring the original. Assuming for the sake of arguments a criminal case was registered against the workman, that by itself was no ground much less just to terminate the services of workman. The services of Government servant can only be terminated on his conviction on a charge involving moral turpitude and that to only if the conduct of such Government servant has led to his conviction. It appears that the officials of the management are totally unaware of the legal procedure. The termination of the services of the workman is thus patently illegal and is entitled to reinstatement with continuity of service.

It is quite interesting to observe here that during the arguments on a suggestion put by the court the workman agreed to relinquish his claim of back wages to the extent of 1/2 but Shri V. K. Sharma, S. D. O. who appeared as management witness did not at all agree to the relinquishment of claim of workman with regard to the same. In any case the workman has made a statement that he remained unemployed throughout. He has also made a statement giving up his claim to the extent of 1/2. In view of the statement made and despite the refusal of S. D. O. of the management not to accept this contention I hold that the workman is entitled to the back wages to the extent of 50%. The finding on this issue is, therefore, returned in favour of the workman and against the management.

- (4) Relief.

In the end, it is held that the workman is entitled to reinstatement with continuity of service and back wages to the extent of 50%.

The reference shall stand answered accordingly.

Before parting with this award it will only be appropriate to bring the conduct of Shri V. K. Sharma, S. D. O. to the notice of the authorities concerned for taking any appropriate action as deemed proper. Hence a copy of the award shall be sent to the Engineer-in-Chief, Public Health, Chandigarh after its publication in the official gazette.

S. R. BANSAL,

The 18th January, 1995.

Additional District & Sessions Judge,  
Presiding Officer, Labour Court, Ambala.

Endorsement No. 112, dated the 25th January, 1995.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District & Sessions Judge,  
Presiding Officer, Labour Court, Ambala.

No. 14/13/87-6Lab./345.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s M. D., Haryana State Co-operative Supply and Marketing Federation Ltd., Sector 7, Chandigarh *versus* Raj Pal Sharma.

IN THE COURT OF SHRI S. R. BANSAL, (ADDITIONAL DISTRICT AND SESSIONS JUDGE,  
PRESIDING OFFICER, LABOUR COURT, AMBALA.

Reference No. 329 of 1989

*between*

WORKMAN SHRI RAJ PAL SHARMA SON OF SHRI RAM CHANDER SHARMA,  
KAITHAL GATE, PUNDRI, KURKSHETRA

*and*

THE MANAGEMENT (1) MANAGING DIRECTOR, HARYANA STATE CO-OPERATIVE  
SUPPLY AND MARKETING FEDERATION LTD., SECTOR 7, CHANDIGARH AND (2)  
DISTRICT MANAGER, HAFED, KAITHAL

*Present :*

WR. Shri R. Nath.

MR. Shri U. Kant.

#### AWARD

1. In exercise of the powers conferred by clause (c) of Sub-Section (i) of Section 10 of the Industrial Disputes Act, 1947 for short "the Act"), the Governor of Haryana referred the following dispute, between the workman Shri Raj Pal Sharma and the management (1) Managing Director, Haryana State Co-operative Supply and Marketing Federation Ltd., Sector 7, Chandigarh and (2) District Manager, Hafed, Kaithal to this Court, for adjudication,—*vide* Haryana Government, notification bearing No. 37438—43, dated the 29th August, 1989:—

Whether the termination of services of Shri Raj Pal, Sharma, is valid and justified ? If not, so, to what relief is he entitled ?

The workman raised an industrial dispute by serving a demand notice dated 18th May, 1989 under section 2-A of the Act. The conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having failed, the appropriate Government made the above mentioned reference to this court.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and stated that his demand notice may be treated his statement of claim. The respondent filed their statement to the demand notice/claim statement.

On the rival contentions of the parties, the following points in issues were laid down for decision,—vide order dated 28th March, 1990 :—

- (1) Whether the impugned termination of services of the workman is invalid ? OPW
- (2) Whether the reference is not maintainable for the reasons stated in preliminary objections of the WS ; OPM.
- (3) Relief.

Parties led evidence. I have heard the representatives of the parties. My issuewise findings are as under :—

#### Issue No. 1 :

The workman examined himself as WW-1 and closed his evidence. From the management side MW-1 Shri P. K. Arora, Field Inspector, Hafed and MW-2 Shri K. L. Yadav, District Manager, Hafed, Jind were examined and the evidence was closed by the management. The workman in his deposition stated that he was appointed as Chowkidar w. o. f. 9th November, 1984 and the management terminated his services w. o. f. 3rd April, 1989. He further deposed that the management had been taking work from him by writing some other workers name in the record. He identified the names of such persons as Raj Bir and Ram Chander. According to him he worked by the name of Raj Bir from 17th June, 1985 to 30th November, 1985 and in the name of Ram Chander from 1st December, 1985, 30th April, 1986. He further deposed that he later on filed a dispute with the Labour Court and he was taken back in service w. o. f. 11th July, 1988. He also deposed that his juniors were allowed to continue and even after his termination new persons were appointed by the respondent-management. According to him no notice or compensation was given/paid to him before terminating his services. He claims reinstatement with continuity of service and back wages. MW-1 in his deposition however stated that Raj Pal was appointed as Chowkidar but he entered into a compromise before Labour Officer on 14th July, 1988. According to him, the workman did not perform any duty from 11th July, 1988 to 3rd April, 1989 and as a result of the compromise on 14th July, 1988 he was paid everything by the respondent-management. MW-2 placed on record certain documents and corroborated the version of Shri P. K. Arora MW-1. The perusal of demand notice shows that the management terminated his services as alleged w. o. f. 3rd April, 1989, which is alleged to be illegal. Document Ex. M-1 in any case also reveals that as a result of the compromise as referred to above the workman had got the compensation from the respondent-management and no dispute had left with regard to earlier termination. As a result of this compromise the Labour Officer accordingly consigned the dispute in his record room and Ex. M-2 is the writing to this effect. The workman in any case has not been able to prove beyond any doubt as to whether he worked again with the respondent-management after the compromise was effected with the intervention of Labour Court Hisar. The document Ex. W-1 does not bar the workman to prove his contention that he worked with the respondent-management again after the compromise. The writing therein indicates that he worked from September, 1987 to December, 1988. On the other hand, he himself admits that had got his dues from the management upto July, 1988 after the compromise. I can not be thus proved from Ex. W-1 that the workman was again appointed by the respondent-management after July, 1988. The workman should have proved his appointment by placing on record some documentary evidence while from only it could be gathered that he was again illegally terminated on 3rd April, 1989 as alleged. In the situation this issue is accordingly decided against the workman and in favour of the respondent-management. It can be held that the workman was again in service of the respondent-management for a period of more than 240 days and his services were terminated illegally in 1989.

#### Issue No. 1 :

This issue was not pressed and therefore, need no separate finding on this issue.

#### Relief.

In the end, it is held that the workman is not entitled to any relief.

The reference shall stand answered accordingly.

Dated, the 20th January, 1995

S. R. BANSAL,

Additional District and Sessions Judge,  
Presiding Officer, Labour Court, Ambala,  
Camp at Pinjore.

Endorsement No. 113, dated the 25th January, 1995

Forwarded (four copies), to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,  
Presiding Officer,  
Labour Court, Ambala.  
Camp at Pinjore.

The 13th March, 1995

No. 14/13/87-6Lab./360.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/s S. M. Synthetics *versus* Hari Chand.

BEFORE SHRI N. L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT-I, FARIDABAD

Reference No. 152 of 89

IN THE MATTER OF INDUSTRIAL DISPUTE

*between*

SHRI HARI CHAND C/O COTTEN MILL MAZDOOR UNION (REGD.),  
C.I.T.U. OFFICE, BHUD COLONY, FARIDABAD

.. Workman

*and*

M/S. S. M. SYNTHETICS, 13/3, MATHURA ROAD, FARIDABAD

.. Management

Present :

Sh. Jagbir Bhadana, Authorised representative for Management.

Workman *Ex-parte*.

#### AWARD

Under the provisions of section 10 (1) (d) of Industrial Disputes Act, 1947, the Government of Haryana have,—*vide* Endorsement No. OV/FD/22717—22, dated 30th May, 1989 referred the following dispute between the parties above named for adjudication:—

“Whether termination of services of Shri Hari Chand is legal and justified. If not, to what relief he is entitled?”

2. The case of the workman is that he was appointed as weaver on 1st January, 1987 and his last drawn wages were Rs. 708 per month. His work and conduct was always found to be satisfactory. The Management was not providing benefits to the workmen such as attendance card, wages slip, leave book, ESI card, P. F., minimum wages etc. and the demand made therefor annoyed the Management. In consequence four of the workmen namely Rajeshwar, Chhote Lal, Vijay Kumar and Achhe Lal were stopped at the gate on 18th October, 1988. A complaint to that effect was made to the Labour Inspector on 19th October, 1988 and then on 21st October, 1988. The Management closed the gate for all its workers. A complaint to that effect was made to the Labour Inspector on 22nd October, 1988 who, in turn, had advised the workmen to serve a demand notice. It is on these facts that Hari Chand one of the workman got a reference made from the state Govt. for adjudication.

3. In the written statement filed by the Management, stand taken is that the workman had joined his duties on 1st April, 1987 and worked till 19th October, 1988. He had collected his full & final dues. According to management, the workman had not completed 240 days of service and also that the establishment was closed on 21st October, 1988. Stand has also been taken that their establishment is covered under Punjab Shops and Commercial Establishments Act, 1951.

4. In the rejoinder, pleas taken in the demand notice have reiterated while those in the written statement controverted.

5. On the pleadings of the parties, following issues were framed on 29th November, 1991 :—

- (1) As per reference ? OP Parties.
- (2) Whether the establishment of the Management was covered under the Punjab Shops and Commercial Establishments Act, 1958 ? If so, to what effect ? OPM
- (3) Whether the establishment has been closed ? If so, when and to what effect ? OPM
- (4) Whether the reference is bad in law ? OPM
- (5) Whether the reference is not maintainable ? OPM

6. On 7th November, 1994, the workman had failed to turn up and was thus proceeded *ex parte*.

7. I have heard Authorised Representative for the Management and perused facts on record. My findings on each of the issues with reasons therefor are as under :—

Issue No. 2:

8. Naresh Kumar examined as MW-1, stated that there were only eight persons working in the Establishment and the same was covered under the Shops Act. The witness placed on record Ex. M-2 from 'F' to show that the Establishment was registered u/s 13 of the Punjab Shops and Commercial Establishments Act, 1958,—vide R. No. FBD/1/81/613, dated 31st August, 1988, Form 'B' containing notice to be exhibited u/s 20(1) of Shops Act, 1958. There is no evidence contrary to the same. As such, holding that the management is registered under Shops and Commercial Establishments Act, this issue is decided in favour of management and against the workman.

Issue No. 3:

9. Naresh Kumar examined as MW-1, stated that lease of the premises of S. M. Synthetics was terminated on 30th September, 1988,—vide letter Ex. M-4. Consequent thereto, notice Ex. M-5 was displayed that since the unit was running in losses, the services of all the employees shall stand terminated with effect from 21st October, 1988 and they should collect their full and final dues. The witness was subjected to quite a lengthy cross examination but the Authorised Representative for the workman could not extract anything contrary to the stand of the Management. Accordingly, holding that the unit had been closed, this issue is decided in favour of the management and against the workman.

Issue Nos. 4 & 5 :

10. The onus of proof of both these issues was on the management. Neither any evidence has been led on these issues nor the same were pressed. As such, both the issues are decided against the management and in favour of the workman.

Issue No. 1 :

11. Naresh Kumar Examined as MW-1 stated that after the termination of lease of the premises on which the unit of the management was located, all the workman were informed that the unit was being closed on 21st October, 1988 and all of them should collect their full & final dues. According to this witness, every one excepting workman Hari Chand collected his dues. The amount payable to Hari Chand was sent to Labour Office through pay order. No evidence in rebuttal has come on record. So, in view of this as also in the context of findings on Issue No. 1. It is held that the action of the management to terminate the services of the workman was legal and justified and he is not entitled to any relief.

The 2nd February, 1995.

N. L. PRUTHI,

Presiding Officer,

Industrial Tribunal-cum-Labour Court-I,  
Faridabad

Endorsement No. 352, dated 3rd February, 1995

A copy, with three spare copies, is forwarded to the Commissioner and Secretary to Government of Haryana, Labour Department Chandigarh.

N. L. PRUTHI,

Presiding Officer,

Industrial Tribunal-cum-Labour Court-I,  
Faridabad.